

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 837 OF 2000

IN

SUIT NO. 88 OF 1991

Kevin David Sequeira & Anr. ... Appellants
(Orig. Plaintiffs)

Versus

Hindustan Petroleum Corporation Ltd.
& Anr. ... Respondents
(Orig. Defendantrs)

Mr. A.J. Joshi for the Appellants.

Mr. M.D.Siodia i/b. Rustomji & Ginwala for Respondent
No.1.

Mr. U.J.Makhija i/b. Mulla & Mulla & Craigie Blunt &
Caroe for Respondent No.2.

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATE : 4th July, 2007.

P.C.

1. By this Appeal, the Appellants have challenged the order passed by the learned Single Judge in Suit No.88 of 1991. That suit was filed by the

predecessor-in-title of the present Appellant No.1 and Appellant No.2. The Plaintiffs claimed a decree of declaration that the sub-lease dated 9th September, 1969 granted in favour of the Plaintiffs by Defendant No.1 stands renewed. A decree for specific performance was also claimed for renewal of the sub-lease. The admitted position is that the land was owned by Defendant No.2, Bombay Port Trust. The predecessor-in-title of the Defendant No.1 - Hindustan Petroleum Corporation Ltd. Caltex Oil Refining (India) Ltd. (Caltex for short) was granted lease of the land by the Bombay Port Trust and Caltex granted sub-lease in favour of the Plaintiffs. The lease granted in favour of Caltex and its successor-in-interest, the Defendant No.1, came to an end on 31-10-1990. The learned Single Judge, after examining the evidence on record, both documentary and oral, came to the conclusion that the Plaintiff is not entitled to any relief claimed by him. The principal consideration that weighed with the learned Single Judge for dismissing the suit was that the Bombay Port Trust has not renewed the lease of Defendant No.1 and, therefore, there is no question of sub-lease in favour of the Plaintiff being renewed. The learned Single Judge, therefore, dismissed the suit.

2. In this Appeal, the learned Counsel appearing for the Appellants has urged only one point. He relies

on the provisions of Section 7 of the Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited Act, 1977 to claim that as a result of the taking over of the assets of Caltex by Government of India, the lease of the property belonging to Bombay Port Trust in favour of the Central Government stands automatically renewed and therefore, according to him, as the lease is deemed statutorily to be renewed, he is entitled to the sub-lease. Perusal of the provisions of Section 7 of the above referred Act however, shows that submission is devoid of merit. By operation of sub-section (2) of Section 7 of the above referred Act, the Central Government steps into the shoes of Caltex in relation to leases which were either current or surrendered by Caltex after 2nd February, 1974 and by virtue of sub-section (3) of Section 7, an option is given to the Central Government to have lease renewed. Section 7 of the above referred Act does not contemplate any automatic or deemed renewal of the lease. All that is done by the statute is that an option is given to the Central Government to apply for renewal of the lease and if such an application is made, the lease stands renewed on the same terms and conditions on which the lease was originally granted or entered into. Insofar as the present case is concerned, the plaintiff himself has stated in his deposition as under :-

"The lease between Hindustan Petroleum Corpn. and Bombay Port Trust has expired in 1990. Thereafter I requested the Defendant No.1 HPL to get the lease renewed from Bombay Port Trust because if the head lease is not renewed, Defendant No.1 cannot renew sub-lease in my favour..."

It is thus clear that the Plaintiff admits the position that unless the lease is renewed by Defendant No.2 in favour of Defendant No.1, there is no question of renewal of sub-lease in favour of the Plaintiff. There is nothing on record brought by the Plaintiff to show that the lease of the land has been renewed by Defendant No.2 in favour of Defendant No.1. The learned Single Judge has recorded a clear finding in para 8 of his Judgment that grant of sublease in favour of the Plaintiffs is in violation of the terms on which lease was granted by defendant No.2 to defendant No.1. This finding was not challenged before us. The learned Single Judge has observed that the sublessee was required to make a request to the lessee for renewal of the sublease. According to the Plaintiffs, that request was made by letters dated 26.3.1990 and 21.4.1990, the defendant No.1 denied that these letters were received by the defendant No.1. The learned Single Judge has recorded a finding that the Plaintiffs have not been able to prove that these letters were actually received

by the defendant No.1. These observations and findings were also not challenged before us. We have found that for renewal of the lease the Central Government has to exercise the option given to it by the law. There is nothing on record to show that such an option was exercised by the Central Government or defendant No.1. Thus there is no question of renewal of the lease in favour of defendant No.1 by defendant No.2 under the aforesaid statute. Under the agreement of sublease for renewal of the sublease, receipt of request by the lessee from the sub-lessee is essential. The Plaintiffs have failed to prove that any such request was made by them to the defendant No.1. Therefore, there is no question of renewal of the sublease in favour of the Plaintiffs under the agreement of sublease.

3. Thus, we find that the Judgment of the learned Single Judge is completely in consonance with the material on record. We do not find that there is any infirmity in the Judgment of the learned Single Judge. Therefore, there is no reason to interfere with the Judgment of the learned Single Judge impugned in this Appeal.

The Appeal is, therefore, dismissed.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)